

<sup>2160-1</sup>

Of Counsel:

BURKE McPHEETERS BORDNER & ESTES

WILLIAM A. BORDNER 1371-0  
JOHN REYES BURKE 6251-0  
Suite 3100 - Mauka Tower  
Pacific Guardian Center  
737 Bishop Street  
Honolulu, Hawaii 96813  
Telephone No. (808) 523-9833  
Fax No. (808) 528-1656

Attorneys for Defendant and  
Third-Party Plaintiff  
FRANKLIN K. MUKAI

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

SPORTS SHINKO (USA) CO.,  
LTD., a Delaware corporation,

Plaintiff,

vs.

KIAHUNA GOLF CLUB, LLC, a  
Hawai`i limited liability  
company; KG KAUAI  
DEVELOPMENT, LLC, a Hawai`i  
limited liability company;  
PUKALANI GOLF CLUB, LLC, a  
Hawai`i limited liability  
company; KG MAUI  
DEVELOPMENT, LLC, a Hawai`i  
limited liability company;

CIVIL NO. 04-00126 ACK/BMK

DEFENDANT FRANKLIN K.  
MUKAI'S MOTION TO ALTER  
OR AMEND JUDGMENT FILED  
ON APRIL 10, 2007;  
MEMORANDUM IN SUPPORT  
OF MOTION; CERTIFICATE OF  
SERVICE

Trial: January 29, 2008

MILILANI GOLF CLUB, LLC, a Hawai`i limited liability company; QK HOTEL, LLC, a Hawai`i limited liability company; OR HOTEL, LLC, a Hawai`i limited liability company, and KG HOLDINGS, LLC, a Hawai`i limited liability company, FRANKLIN K. MUKAI,

Defendants.

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FRANKLIN K. MUKAI,

Third-Party Plaintiff,

vs.

SPORTS SHINKO CO., LTD., a Japan corporation, SPORTS SHINKO (HAWAII) CO., LTD., a Hawai`i corporation, SPORTS SHINKO (MILILANI) CO., LTD., a Hawai`i corporation, SPORTS SHINKO (KAUAI) CO., LTD., a Hawai`i corporation, SPORTS SHINKO (PUKALANI) CO., LTD., a Hawai`i corporation, SPORTS SHINKO RESORT HOTEL CORPORATION, a Hawai`i corporation, SPORTS SHINKO (WAIKIKI) CORPORATION, a Hawai`i corporation, and OCEAN RESORT HOTEL CORPORATION, a Hawai`i corporation,

Third-Party Defendants.

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**DEFENDANT FRANKLIN K. MUKAI'S MOTION TO ALTER OR  
AMEND JUDGMENT FILED ON APRIL 10, 2007**

Pursuant to Fed.R.Civ.P. 12(h)(3), 54, 59 and 60, Defendant Franklin K. Mukai hereby moves this Court for an order altering and/or amending the judgments filed herein on April 10, 2007 in Civil Nos. CV 04-001245ACK-BMK, CV 04-00126ACK-BMK, and CV 04-00128ACK-BMK.

Defendant Mukai respectfully submits that the purported judgments filed in the cases brought by Sports Shinko (USA) Co., Ltd. (hereafter “SS-USA”), identified by civil number above, adjudicate “fewer than all the claims ...[and adjudicate] the rights and liabilities of fewer than all the parties ... [and therefore do] not terminate the action[s] as to any of the claims or parties...[.]” See Fed.R.Civ.P. 54(b). For example, the purported judgments do not address the claims made by Plaintiff SS-USA against Defendant Mukai, nor do those judgments address any of the additional parties and claims, including those third-party defendants named in Defendant Mukai’s third-party complaints, and the counterclaims brought by those additional third-party defendants.

Nonetheless, this Court has both entered "judgment" in the three civil cases identified by number above, and notified all parties that the cases were closed on April 10, 2007 (via electronic notice), and further vacated certain prior orders entered therein.

Consequently, Defendant Mukai respectfully requests that this Court enter amended judgments in Civil Nos. CV 04-001245ACK-BMK, CV 04-00126ACK-BMK, and CV 04-00128ACK-BMK to appropriately reflect the disposition of all claims and all parties given the Court's determination that it lacked subject matter jurisdiction over those three cases identified by civil number above from their inception. "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction over the subject matter, the court shall dismiss the action." Fed.R.Civ.P. 12(h)(3).

DATED: Honolulu, Hawaii, April 19, 2007.

/s/ John Reyes-Burke \_\_\_\_\_  
JOHN REYES-BURKE  
Attorney for Defendant and  
Third-Party Plaintiff FRANKLIN K.  
MUKAI